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Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-first session, 17–26 April 2018

Opinion No. 28/2018 concerning Bakri Mohammed Abdul Latif, Hamdy Awad Mahmoud Abdel Hafez, Abdelkader Harbi Mohieddin Mohamed, Ammar Mohamed Refaat, Magdy Farouk Ahmed Mohamed, Mohsen Rabee Saad El Din, Mohamed Bahloul Mohamed Ghazali, Mohamed Azmy Mohamed Ahmed, Mohammed Yousef Mohamed Hassan, Mostafa Kamel Mohamed Taha, Mounir Bashir Mohammed Bashir, Maysiruh Abd Alaziz Muhammad Ali, Walid Fouad Abdeen Nasser and Yahya Mohammed Abdul Khaliq Sulaiman (Egypt)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 33/30.

2. In accordance with its methods of work (A/HRC/36/38), on 21 December 2017 the Working Group transmitted to the Government of Egypt a communication concerning Bakri Mohammed Abdul Latif, Hamdy Awad Mahmoud Abdel Hafez, Abdelkader Harbi Mohieddin Mohamed, Ammar Mohamed Refaat, Magdy Farouk Ahmed Mohamed, Mohsen Rabee Saad El Din, Mohamed Bahloul Mohamed Ghazali, Mohamed Azmy Mohamed Ahmed, Mohammed Yousef Mohamed Hassan, Mostafa Kamel Mohamed Taha, Mounir Bashir Mohammed Bashir, Maysiruh Abd Alaziz Muhammad Ali, Walid Fouad Abdeen Nasser and Yahya Mohammed Abdul Khaliq Sulaiman. The Government replied to the communication on 20 February 2018. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. Bakri Mohammed Abdul Latif is 67 years old. Mr. Latif is a pensioner. Prior to his arrest, he lived in the city of Aswan. He is married and has children.

5. Hamdy Awad Mahmoud Abdel Hafez is 56 years old. Prior to his arrest, he lived in the city of Aswan. He is married and has children.

6. Abdelkader Harbi Mohieddin Mohamed is 33 years old. Mr. Mohamed is employed at Apollo Tourism Company. Prior to his arrest, he lived in the city of Aswan. He is married and has children.

7. Ammar Mohamed Refaat is 41 years old. Mr. Refaat is a researcher at Aswan Electricity Company. Prior to his arrest, he lived in the city of Aswan. He is married and has children.

8. Magdy Farouk Ahmed Mohamed is 27 years old. He is a driver and prior to his arrest, he lived in the city of Aswan. He is married and has children.

9. Mohsen Rabee Saad El Din is 50 years old. Prior to his arrest, Mr. El Din lived in the city of Aswan. He is married and has children.

10. Mohamed Bahloul Mohamed Ghazali is 20 years old. He is a student and prior to his arrest, he lived in Abo Elrish village, near the city of Aswan.

11. Mohamed Azmy Mohamed Ahmed is 37 years old. Mr. Ahmed is a lawyer. Prior to his arrest, he lived on the island of Nagea El Omrab, Aswan. He is married and has children.

12. Mohammed Yousef Mohamed Hassan is 36 years old. Mr. Hassan is an employee at the Ministry of Supply. Prior to his arrest, he lived in the city of Aswan. He is married and has children.

13. Mostafa Kamel Mohamed Taha is 28 years old. Prior to his arrest, he lived in the city of Aswan. He is married and has children.

14. Mounir Bashir Mohammed Bashir is 50 years old. He is a lawyer and prior to his arrest, he lived in the city of Giza. He is married and has children.

15. Maysiruh Abd Alaziz Muhammad Ali is 36 years old. Mr. Ali is employed at a tourism company. Prior to his arrest, he lived in Najea Alkhyab, a village in eastern Aswan near the city of Aswan. He is married and has children.

16. Walid Fouad Abdeen Nasser is 39 years old. Prior to his arrest, he lived in the city of Aswan. He is married and has children.

17. Yahya Mohammed Abdul Khaliq Sulaiman is 40 years old. He is a tour guide and prior to his arrest, he lived in the city of Aswan. He is married and has children.

Background

18. According to the source, on 3 December 2014, the President issued Decree No. 444/2014 concerning the demarcation of areas adjacent to the borders of Egypt. As a result, the territory of the Nubian people in the area 110 km east of the High Dam Lake and 25 km west of it became a military zone, thus prohibiting civilians from entry.

19. The source submits that this has resulted in a denial of the right of Nubians to return to their original lands in the eastern region on the banks of the High Dam Lake.

Arrest and detention

20. According to the source, on 3 September 2017, dozens of Nubian activists participated in a peaceful musical march in the Corniche area of Aswan, demanding the right of Nubians to return to their lands. Since their lands were forcefully taken from them by the State, the aim of the march was to publicize their rejection of Decree No. 444/2014, which gave ownership of the land close to the Egyptian borders to the army, even though it already belonged to certain villages or tribes.

21. The source alleges that the army and the police dispersed the demonstrators using violence and conducted mass arrests.

22. The source alleges that on 3 September 2017, the 14 above-mentioned individuals were arrested and presented to the Public Prosecution service in the city of Aswan. The prosecution pressed charges concerning participation in and incitement to organize demonstrations intended to disrupt security and public order, impeding and endangering citizens and obstructing traffic, verbal transgression against detention personnel and members of the central security and secret forces, and organization of a demonstration without notifying the competent authorities.

23. The source explains that the prosecution issued a decision to imprison the above-mentioned individuals for 15 days pending investigations. From that day and until the order of release, their detention was renewed every 15 days. The last hearing for renewal of their detention took place on 6 October 2017. They were held in Al-Shalal prison in Aswan.

24. According the source, on 15 November 2017, the State Security Emergency Court held the first hearing and the judge ordered the release of all the above-mentioned individuals. Since then, the hearings have been postponed and delayed.

25. The source explains that the case was referred to the State Security Emergency Court owing to the specific charges against the above-mentioned individuals. That move has been widely criticized by Egyptian human rights organizations because the judgments of that Court are considered final and appeals are not allowed. The above-mentioned individuals' defence lawyers argued in court that the Emergency Court is unconstitutional. In particular, they claimed that articles 12, 14, 17 and 20 of the law on a state of emergency (No. 162/1958), under which the Court was created, are unconstitutional. Article 12 forbids any appeal against Emergency Court judgments, while articles 14, 17 and 20 provide that the President has the power to amend the Court's judgments and continue the trial of cases referred to the Court even after a state of emergency has ended. The issue of the unconstitutionality of these articles has been raised previously. On 20 May 2017, the Egyptian Administrative Court delayed its judgment on a case in order to refer the argument concerning the unconstitutionality of articles 12, 14 and 20 of the law on a state of emergency to the Constitutional Court and request its judgment on the matter.

Deprivation of liberty under category II

26. The source submits that all the charges made against the above-mentioned individuals resulted from their alleged participation in a peaceful demonstration against Decree No. 444/2014, and that the authorities used repressive policies against political opponents.

27. The source explains that peaceful demonstrations in Egypt are violently dispersed on a regular basis. People are then arrested and charged under Law No. 107/2013 on protests and demonstrations.

28. The source states that, because the arrests of the above-mentioned individuals are the result of their political affiliations and participation in a peaceful demonstration, they constitute unlawful interference with the right to hold political opinions. The only reason for their arrest is their participation in a peaceful protest and their criticism of Decree No. 444/2014.

Deprivation of liberty under category III

29. The source reports that none of the above-mentioned individuals have been shown an arrest warrant; the authorities did not provide them with an explanation for their arrests and none of them have been assisted by lawyers during interrogations or the court hearings. Furthermore, they were denied their right to have access to their families.

30. In addition, the source alleges that during their provisional detention, the above-mentioned individuals were detained with convicted criminals in Al-Shalal prison. This is a clear violation of article 10 (2) (a) of the Covenant, which requires that accused persons be separated from convicted persons and subject to separate treatment appropriate to their status as unconvicted persons.

31. The source also alleges that some of the above-mentioned individuals were violently beaten up during their arrests.

Deprivation of liberty under category V

32. The source submits that the above-mentioned individuals were arrested for expressing their political opinion and support for the rights of Nubians. More specifically, their arrests are the result of their participation in peaceful demonstrations against the Government and the Decree. The authorities failed to present any proof that these individuals were involved in violence in the demonstration in order to substantiate the charges held against them.

33. In addition, the source claims that the way the above-mentioned individuals have been treated by the judicial authorities and law enforcement officers demonstrates discrimination for reasons of political opinion, as they have been deprived of rights that are guaranteed to common criminals in Egypt.

Response from the Government

34. On 21 December 2017, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested the Government to provide, by 20 February 2018, detailed information about the current situation of the 14 above-mentioned individuals and any comments on the source's allegations. The Government replied on 20 February 2018.

35. The Government asserts that that there are no minorities in Egypt and that the residents of Nasr al-Nuba in Aswan Governorate are Egyptian citizens who enjoy, on an equal footing with other citizens, the rights protected by the Constitution and have the same obligations as them. They live in different parts of the Republic and in all governorates without any discrimination or separation.

36. The Government notes that article 73 of the Constitution on the right to protest, and articles 8 and 9 of Law No. 107/2013 on protests and demonstrations set out clear procedures and criteria for public meetings and demonstrations. The right to protest is considered to be a right with conditions, including the obligation of notification before any demonstration takes place. However, the demonstration in which the 14 individuals, along with others, took part and for which they were arrested took place on 3 September 2017 without notification and disturbed traffic in the street leading to government facilities.

37. According to the Government, such action cannot be considered a peaceful demonstration and in fact violated articles 23, 30, 32, 34, 36, 46 of the Criminal Procedure Code and article 54 of the Constitution. This forced the police to intervene to protect other citizens and public property. The demonstrators were advised by the police to abide by the law. However, they did not comply with the instructions of the police. Thus, 24 individuals

were arrested and then subjected to an investigation process by the public prosecution. Among them were the 14 individuals who are the subject of the present case.

38. The Government rejects the allegations of any undue influence during the interrogations, noting that all 14 persons were interrogated and they suffered no physical harm or injuries during the interrogations. Moreover, no complaints of physical harm or injuries were made either by the detainees or their lawyers.

39. The Government submits that the investigation established that two detainees were carrying brochures and leaflets, one of whom participated in the demonstration. Other detainees had leaflets and were publicizing the demonstration, which constitute crimes under national law when the conditions are met, such as obstructing traffic. According to the Ministry of the Interior, investigations revealed that a financial plan and meeting had been organized, during which the accused had agreed to take systematic action, including holding demonstrations and spreading fear in order to disturb security and peace. Some of the accused filmed the demonstrations, which were then broadcast by international news agencies.

40. The Government also submits that investigations and testimonies revealed that the army did not intervene to arrest any of the demonstrators. The arrests were conducted by the police, who have the authority to arrest.

41. The Government thus concludes that the arrests were carried out on the basis of a demonstration that occurred without notifying the authorities, and that the accused financed and publicized demonstrations and protests, disturbed public order and security, affected and endangered citizens, and insulted police officers.

42. The Government indicates that a court hearing took place on 15 November 2017, during which the judges ordered the release of the 14 individuals, who had been released on bail, awaiting the hearing. The hearing was initially postponed to 12 December 2017 and again until 3 January 2018.

43. In relation to the allegations made by the source on the lack of contact with the outside world, the Government asserts that the detainees received 49 visits from 3 September to 15 November 2017, with a total of 2,407 visitors (the Government attached to its response a log of the visits). They also received 21 medical visits and in addition, some of them were transferred to Aswan General Hospital and the University Hospital for medical care.

44. The Government also contends that the detainees were represented by a large team of lawyers who defended them during the investigation and the trial. Two detainees did not have lawyers and the prosecutor approached the legal aid agency provided by the bar association in order to ensure them legal aid. However, the bar association declined the request of the prosecutor. The Government notes that there are lists of the lawyers who took part in the hearings on 20 September, 3, 9, 17 and 30 October, and on 15 November 2017 when the 14 individuals were released.

45. According to the Government, all the detainees and their lawyers had access to all documents and were provided with official copies of the case file. Anyone who wanted to visit them was granted the right to do so. Therefore, the Government rejects the allegation that the detainees' right to freedom of expression was restricted as unfounded and false.

Additional comments from the source

46. On 6 March 2018, the Government's response was sent to the source for additional comments. In its response of 21 March 2018, the source rejects the claim made by the Government that there are no minorities in Egypt. According to the source, this comment aims to preserve national unity. However, the source highlights that "national unity" is often used against Nubians in Egypt to delegitimize their identities, culture, history and language.

47. The source confirms that, while the 14 individuals were indeed released on bail on 15 November 2017, the court proceedings against them continue. Given the severity of the

breaches of their rights, the source requests the Working Group to proceed with the consideration of the case.

48. In relation to the trial by the State Security Emergency Court, the source reiterates that this Court's judgment cannot be appealed, which renders its judgment final in clear violation of the defendants' right to appeal. The only recourse available to the defendants is to submit a request to the President to overrule the punishment. However, the source contends that the right to appeal is a core element of the right to a fair trial, aiming to ensure that a conviction resulting from prejudicial errors of law or fact, or breaches of the accused's rights, does not become final.

49. The source argues that the composition of the Court itself calls into question its impartiality and independence from the executive, since the court may be composed of three judges, three judges and two High Official Military Officers or three High Official Military Officers. While the Court is currently composed of civilian judges only, the President may re-establish the composition of the Court at any time, at his discretion.

50. The source refers to the finding of the African Commission on Human and Peoples' Rights that special tribunals established under the Civil Disturbances Act in Nigeria were not impartial because their composition was at the discretion of the executive.[1] The source notes that the European Court of Human Rights found that there were legitimate reasons to doubt the independence and impartiality of courts in Turkey as one of the three judges on each panel was a military officer in the Military Legal Service.[2]

51. The source rejects the Government's contention that the demonstrators failed to comply with the requirement under national law to notify the authorities prior to protesting. In this connection, the source recalls the report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, in which he stated that such notification should be subject to a proportionality assessment, should not be unduly bureaucratic, and that prior notification should ideally be required only for large meetings or meetings that might disrupt road traffic (see A/HRC/20/27, para. 28). Both the Government of Egypt and national legislation on protests and demonstrations failed to apply any proportionality assessment to the notification requirement. According to the source, it is difficult to understand the proportionality of a notification requirement for a meeting of 50 people or fewer given, for example, that the authorities would not need to regulate traffic as they would with large demonstrations.

52. As to claims that the Nubian defendants blocked the road and caused disturbance, the source points out that the defendants' lawyers have submitted requests for copies of the relevant extracts from the register of Awal Aswan Police Station and the Directorate of Security, and from the crisis room in Aswan to see if there were any reports of road blockages at the time of the events. They have also requested the contents of a number of surveillance cameras that were present in the area. Since the 14 individuals, along with others, were arrested in the direct vicinity of the military intelligence premises, the closed-circuit television cameras from those premises should show whether State officials resorted to violence against the defendants during arrest and whether the defendants were blocking the road. The source claims that it is not aware of any action taken by the authorities in response to those requests.

53. The source reiterates that the demonstration was in fact a peaceful musical march with Nubians singing and playing tambourines, a far cry from the violent demonstration suggested by the Government.

54. The source rejects the claim made by the Government that there was no violence used during the arrest of the 14 individuals in question. A number of defendants, including

[1] See African Commission on Human and Peoples' Rights, *International Pen and Others v. Nigeria* (communications Nos. 137/94, 139/94, 154/96 and 161/97) (1998), para. 86. See also *Malawi African Association and Others v. Mauritania* (communications Nos. 54/91, 61/91, 98/93, 164/97–196/97 and 210/98) (2000), paras. 98–100.

[2] See European Court of Human Rights, *Incal v. Turkey* (application No. 22678/93) (1998), paras. 65–73, and *Öcalan v. Turkey* (application No. 46221/99) (2005), paras. 112–118.

Hamdy Awad Mahmoud Abdel Hafez, Mohamed Azmy Mohamed Ahmed, Mohammed Yousef Mohamed Hassan and Walid Fouad Abdeen Nasser, reported that they were beaten during their arrest by the Central Security Forces. They stated that during their first appearance before the prosecution, as documented in the official investigation documents.

55. The source indicates that Mohammed Yousef Mohamed Hassan reported that security officers beat him and others, and tore his T-shirt. Mohamed Azmy Mohamed Ahmed reported that the detainees were told by the Security Director to leave within three minutes. Then, a Central Security Officer, after an altercation with the Security Director, refused to let them leave. Thereafter, the Central Security Officers encircled them and began beating him and others, including women who were with them, and took him away in a Central Security deportation vehicle. His report of the altercation between the Security Director and the Central Security Officer on whether to allow the detainees to leave or to arrest them is corroborated by several other defendants.

56. According to the source, this shows that the authorities did not deal with the matter in a proportionate manner and began to use force and coercion. In addition, it illustrates the confusion among State authorities on the validity of arresting citizens who take part in a peaceful assembly.

57. The source argues that following their arrest, the defendants were imprisoned in the Central Security Forces Al-Shalal prison in Aswan and they were thus placed under the control of the same forces who had arrested and beaten them. The defendants could not contact their families or lawyers and were not informed in writing of the charges against them until their appearance before the prosecution the day after their arrest.

58. The source claims that the official files document several incidents where the prosecution failed to afford the defendants their right to counsel during questioning. The prosecution usually started questioning the defendants very early in the morning, around 7 a.m. Given such an early start to the interrogation and the lack of prior notification, there were no lawyers from the bar available to appear before the prosecution. However, the questioning went ahead without lawyers.

59. The source points out that, while under Egyptian law, the State is justified in carrying out interrogations without a lawyer present, that is the case only when an individual is caught in the act and when there is a risk of interference with the evidence. That was not the case in the present case, as the defendants had been arrested for exercising their right to freedom of expression in a peaceful assembly, and there is no evidence demonstrating otherwise.

60. Moreover, the source asserts that instead of the defendants being sent to the prosecution office for questioning to ensure that they were able to speak freely and without fear of repercussions, the prosecution came to them in the Central Security Force prison in Al-Shalal. As this detention centre is under the control of the same forces who arrested the defendants, the source concludes that this established a coercive environment in which the defendants were unable to communicate freely with the prosecution or their own lawyers.

61. In this respect, the source refers to the jurisprudence of the Working Group in which it has stated that a key safeguard for pretrial detainees is the separation and independence of the authorities responsible for detention from the authorities undertaking the investigation (see E/CN.4/2005/6, para. 79). The Human Rights Committee has also stated that once a judicial authority has ruled that an accused should be detained pending trial, he or she should be remanded to a detention facility outside the control of the forces responsible for the arrest (see CCPR/C/AZE/CO/3, para. 8, CCPR/C/SLV/CO/6, para. 14, E/CN.4/2003/68, para. 26 (g), A/65/273, para. 75, and CAT/C/JPN/CO/1, para. 15 (a)).

62. The source rebuts the claims made by the Government that the prosecution had approved all visitation requests. While that may be true, in reality, family members and lawyers were prevented from seeing the defendants after obtaining a permit from the prosecution. On 7 September 2017, for example, the detainees were prevented from receiving visits from their family members and lawyers despite them having obtained a permit from prosecutors to visit the detainees. Upon their arrival at the detention facility, a

police officer refused to allow them to visit and ordered them to leave. That was not an isolated incident.

63. The source thus reiterates its submission that the arrest and detention of the 14 individuals were arbitrary and fall under categories II, III and V.

Discussion

64. The Working Group wishes to thank both the Government and the source for their timely and detailed submissions in this case. The Working Group notes that all 14 individuals were released on bail on 15 November 2017 and are awaiting trial. However, the Working Group also notes that, in accordance with its methods of work (para. 17 (a)), it reserves the right to render an opinion, on a case-by-case basis, whether or not the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned.

65. In the present case, the Working Group opines that the allegations made by the source are extremely serious. In view of the fact that all 14 individuals have been released on bail only, and are still subject to court proceedings that were initiated on the basis of the facts presented in the initial submission by the source, the Working Group decides to proceed to consider the present case.

66. The source has alleged that the arrest and subsequent detention of the 14 individuals falls under categories II, III and V. The Working Group shall consider these in turn.

Deprivation of liberty under category II

67. The source has submitted that the arrest and subsequent detention of the 14 individuals resulted from their legitimate exercise of the right to demonstrate against the repression of the Nubian people by the Government of Egypt. The source alleges that this is especially manifest through the adoption by the President on 3 December 2014 of Decree No. 444/2014, which provides for the demarcation of areas adjacent to the borders of Egypt. As a result of the provisions of the Decree, the territory of Nubians was considered a military zone, thus prohibiting entry to the area 110 km east of High Dam Lake and 25 km west of it. The source submits that this has resulted in the denial of the right of Nubians to return to their original lands in the eastern region on the banks of High Dam Lake.

68. The Government denies these claims, noting that the arrest of the 14 men, among others, resulted from their failure to comply with the stipulations of article 73 of the Constitution on the right to protest and demonstrate and Law No. 107/2013 on protests and demonstrations (arts. 8–9). According to the Government, such action violated articles 23, 30, 32, 34, 36, 4[illegible] of the Criminal Procedure Code and article 54 of the Constitution. Moreover, the Government has submitted that there are no minorities in Egypt.

69. The Working Group wishes to recall that the enjoyment of the freedom of expression and the right to hold and participate in peaceful assemblies entails the fulfilment by the State of its positive obligation to facilitate the exercise of this right (see A/HRC/20/27, para. 27). As the Special Rapporteur on freedom of peaceful assembly and of association has stated,

> The exercise of fundamental freedoms should not be subject to previous authorization by the authorities … but at the most to a prior notification procedure, whose rationale is to allow State authorities to facilitate the exercise of the right to freedom of peaceful assembly and to take measures to protect public safety and order and the rights and freedoms of others. Such a notification should be subject to a proportionality assessment, not unduly bureaucratic and be required a maximum of, for example, 48 hours prior to the day the assembly is planned to take place (ibid., para. 28).

70. In the present case, the Working Group observes that the Government has failed to provide any details on what notification the demonstrators were required to give to the authorities and what procedure that notification would be subjected to so as to ensure that the principle of proportionality would be duly met.

71. The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has stated that freedom of expression can be exercised through any sort of medium. This includes the right to participate in demonstrations and peaceful protests staged by social sectors or organizations that wish to show their discontent with public policies, natural resource development contracts, the attitudes adopted by civil servants or some other situation (see A/HRC/23/40/Add.1, para. 71).

72. Moreover, the Working Group is not persuaded by the claim made by the Government that the demonstrators violently disrupted traffic, a claim that is categorically denied by the source, who submits that the Government is able to prove this issue with the use of the closed-circuit television recordings. The Working Group notes that the Government has made no mention of such recordings, let alone attempted to comment on the footage. The Working Group also notes that there have been no claims that the demonstration caused any other disruption or that there was any violence by the demonstrators. In fact, the Working Group observes that all the Government has indicated as evidence for the arrests was the presence of leaflets publicizing the demonstrations, planning more demonstrations and filming the demonstrations, which were then broadcast by international media. The Working Group observes that none of these actions involved any violence or incitement to violence.

73. The Working Group also observes that the Special Rapporteur on freedom of peaceful assembly and of association has stated that, should the organizers of an assembly fail to notify the authorities, the assembly should not be dissolved automatically and the organizers should not be subject to criminal or administrative sanctions resulting in fines or imprisonment (see A/HRC/20/27, para. 29). This, however, is precisely what happened to the 14 individuals in the present case. Moreover, the Working Group agrees with the Special Rapporteur that the free flow of traffic should not automatically take precedence over freedom of peaceful assembly (ibid., para. 41). This, again, is precisely what happened in the present case.

74. Moreover, the Working Group considers that the arrest and subsequent detention of the 14 individuals was a direct result of their exercise of their rights under article 27 of the Covenant, as they all belong to the Nubian minority (see paras. 94–97 below). The Working Group refers the case to the Special Rapporteur on minority issues for further consideration.

75. The Working Group therefore concludes that the arrest and detention of the 14 above-mentioned individuals were due to their exercise of the rights to freedom of association and assembly, freedom of expression and rights belonging to members of ethnic minority groups, and therefore fall under category II. The Working Group refers the present case to the Special Rapporteur on freedom of expression and the Special Rapporteur on freedom of peaceful assembly and of association for further consideration.

Deprivation of liberty under category III

76. Given its finding that the deprivation of liberty of the 14 individuals is arbitrary under category II, the Working Group wishes to emphasize that no trial of these individuals should have taken place. However, the trial is taking place and the source has submitted that there were severe violations of the fair trial rights of these individuals and that their subsequent detention therefore falls under category III of the Working Group. The Working Group shall proceed to consider these allegations.

77. The source has submitted that the detention of the 14 individuals is arbitrary and falls under category III since they were arrested without warrants, beaten up during arrest, denied legal assistance, prevented from meeting their families and held together with convicted persons. The source has also argued that the trial of the 14 individuals by the State Security Emergency Court was inappropriate due to that body's lack of impartiality.

78. The Government denies these claims, arguing that the 14 individuals were detained on the spot, during the commission of a crime (in breach of the law on protests and demonstrations); that they were not hurt either during or following the arrest as there were no complaints made to that effect; and that they were provided with legal assistance and allowed to meet their family members and attempts by the authorities were even made to provide legal aid.

79. The Working Group accepts that the 14 individuals were arrested during a demonstration for what was deemed by the authorities to constitute a breach of law. However, the Working Group observes the discrepancy between the submission by the source, who claims that the 14 individuals were denied legal assistance, and that of the Government, which claims that the detainees were represented by a large team of lawyers who defended them during the investigation and the trial. There is a further inconsistency in the Government's response, as the Government also claims that for those who had been arrested and did not have lawyers, the authorities attempted to ensure legal aid but were unable to secure it due to the unavailability of lawyers from the bar association.

80. The Working Group reiterates that article 14 (3) (d) of the International Covenant on Civil and Political Rights explicitly addresses the guarantee of legal assistance in criminal proceedings, which includes the right to be assigned legal assistance (see general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial of the Human Rights Committee, para. 10). The Working Group observes that the Government attempted to ensure that those who did not have their own lawyers were assigned legal aid, but by its own admission that was not possible due to the unavailability of lawyers from the bar association. However, the Government has provided no explanation as to why the interrogations and other proceedings had to proceed and why it was not possible to wait until there was a lawyer available to represent the interests of those who had been arrested but did not have legal representation.

81. In the present case, all 14 individuals were charged with criminal offences and the Working Group recalls that it is incumbent upon the State to ensure that legal representation provided by the State guarantees effective representation (see CCPR/C/75/D/852/1999, para. 7.5). The Working Group also recalls the view of the Human Rights Committee that legal assistance should be available at all stages of criminal proceedings to ensure compliance with article 14 (3) (d) of the Covenant (ibid.). This has not been observed in the present case, which also constitutes a breach of principle 17 (1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and principle 9 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court.

82. The Working Group must also observe that by the Government's own admission, the demonstration took place near government buildings and the source has claimed that there would have been closed-circuit television coverage of the events, which would prove whether there was indeed any violence on the part of the demonstrators, as alleged by the authorities. The source has submitted that requests for the examination of such video surveillance have been made, but no response has been forthcoming from the authorities. The Working Group finds this submission entirely plausible, as government buildings usually are subjected to closed-circuit television surveillance. Yet in the case against the 14 individuals, there appears to be no such evidence. This appears to the Working Group to constitute withholding of important evidence requested by the defence, in breach of article 14 (3) (e) of the Covenant.

83. The Working Group also notes the discrepancy between the submissions made by the source, who claims that the 14 individuals were prevented from contacting their families, and the Government, which has submitted a long list of such meetings that were approved.

84. The Working Group observes that the source has agreed that the authorities may indeed have granted permission for the family members to meet the detainees, but notes that this does not mean they were able to meet in reality. As the source explains, the family members who arrived with the requisite authorizations were turned away by the guards of the detention facility. The Working Group observes that this is a violation of principle 15 of the Body of Principles.

85. The Working Group notes that the Government has not addressed the submission made by the source that the 14 individuals were held together with convicted persons during their pretrial detention in the facility that was run by the same forces who arrested them. This raises two issues. Firstly, article 10 (2) (a) of the Covenant requires that those in

pretrial detention be held separately from convicted persons, a provision that was ignored in the present case. Secondly, as the Working Group has pointed out:

> In the area of criminal law, when coercive measures are imposed, the right to defend oneself must be guaranteed during all phases of the proceedings. This requires equality of means for both the prosecution and the person charged. In order to ensure that equality, the legal system must provide for a separation between the authority driving the investigation and the authorities in charge of the detention and ruling on the conditions of the pretrial detention. This separation is a necessary requirement to avoid having conditions of detention be used to impair the effective exercise of the right to defend oneself, favour self-incrimination, or allow pretrial detention to amount to a form of advance punishment (see E/CN.4/2005/6, para. 79).

86. This means that those arrested on the suspicion of the commission of a crime should not be held by the same authorities who are in charge of the investigation, a principle that was ignored in the present case.

87. The source has also argued that the 14 individuals were beaten up during the arrest and during the interrogations, while the Government has denied these claims in its response, noting that no complaints to that effect were submitted. However, the Working Group observes that in its initial submission, the source claimed that the complaints about beatings were made to the prosecutor and they were recorded in the appropriate documentation which, the Working Group notes, the Government chose not to share. In addition, it has been demonstrated that some defendants were deprived of legal counsel and there is therefore no guarantee that they would have been able to report violent acts committed against them or that the reports were added to the case file. The Working Group observes that the 14 individuals were in the custody of the Egyptian authorities from the day of the arrest until 15 November 2017. This means that the Egyptian authorities owed these individuals a duty of care, which also entails medical examination upon admission and thereafter, which would duly document the state of health of the 14 individuals. The Working Group notes that the Government summarily answered these allegations without bringing to the attention of the Working Group the requisite medical certificates, which would attest to the state of health of the 14 individuals. The Working Group therefore finds a violation of article 14 (3) (g) of the Covenant.

88. The Working Group observes that the Government has failed to address the submission made by the source that the State Security Emergency Court does not satisfy the criteria of article 14 of the Covenant as it lacks impartiality and does not allow appeals.

89. The Working Group observes that it is within its mandate to assess the overall proceedings of the court and the law itself to determine whether they meet international standards.[3] In the present case, the Working Group observes that the composition of the State Security Emergency Court may include military personnel, which makes it akin to a military court. In its jurisprudence, the Working Group has consistently argued that the trial of civilians by military courts is in violation of the Covenant and of customary international law and that under international law, military tribunals can be competent to try only military personnel for military offences.[4] Moreover, in the present case the Government had the opportunity to explain why the case of these 14 individuals falls under the jurisdiction of the State Security Emergency Court, but failed to do so.

90. The Working Group notes that the source has explained that the composition of the State Security Emergency Court for the proceedings against the 14 individuals did not involve any military personnel. However, the source has also explained that the President has extensive discretion to change this composition at any time, and can interfere with the judgments this Court delivers. The Working Group notes the absence of any reply from the Government in relation to these submissions.

91. The requirement of competence, independence and impartiality of a tribunal in the sense of article 14 (1) of the Covenant is an absolute right that is not subject to any

[3] See opinions No. 33/2015, No. 15/2017, No. 30/2017 and No. 78/2017.

[4] See A/HRC/27/48, paras. 67–68, and opinions No. 44/2016 and No. 30/2017.

exception (see general comment No. 32 of the Human Rights Committee, para. 19). As the Human Rights Committee has observed, the requirement of independence refers, in particular, to the procedure and qualifications for the appointment of judges (ibid.). However, a situation where the functions and competencies of the judiciary and the executive are not clearly distinguishable or where the latter is able to control or direct the former is incompatible with the notion of an independent tribunal.[5]

92. In the case of the State Security Emergency Court, the President may change the composition of the court at any time and may also interfere with the judgment it delivers. This is incompatible with the provisions of article 14 (1) of the Covenant, and the Working Group is therefore of the view that the State Security Emergency Court is not an independent and impartial tribunal.

93. Moreover, the only possibility of appeal of the judgment delivered by the State Security Emergency Court is to appeal to the President of the Republic to overrule the punishment. The Working Group observes that article 14 (5) of the Covenant entitles anyone convicted of a crime to the right to have their conviction and sentence reviewed by a higher tribunal. The requirements of independence and impartiality of the tribunal embodied in article 14 (1) apply also to the appeal process, which cannot be satisfied by a review carried out by an executive authority. Moreover, article 14 (5) imposes on States a duty substantially to review conviction and sentence both as to the sufficiency of the evidence and of the law,[6] which cannot be satisfied by a mere review of the punishment. The Working Group therefore concludes there has been a violation of article 14 (5) of the Covenant.

94. Taking into account all the above, the Working Group concludes that the violations of the fair trial rights of Bakri Mohammed Abdul Latif, Hamdy Awad Mahmoud Abdel Hafez, Abdelkader Harbi Mohieddin Mohamed, Ammar Mohamed Refaat, Magdy Farouk Ahmed Mohamed, Mohsen Rabee Saad El Din, Mohamed Bahloul Mohamed Ghazali, Mohamed Azmy Mohamed Ahmed, Mohammed Yousef Mohamed Hassan, Mostafa Kamel Mohamed Taha, Mounir Bashir Mohammed Bashir, Maysiruh Abd Alaziz Muhammad Ali, Walid Fouad Abdeen Nasser and Yahya Mohammed Abdul Khaliq Sulaiman have been of such gravity as to give their deprivation of liberty an arbitrary character (category III).

Deprivation of liberty under category V

95. Lastly, the Working Group wishes to turn its attention to the overarching comment made by the Government in its response that there are no minorities in Egypt. In this respect, the Working Group finds itself in agreement with the Human Rights Committee, which notes that the existence of an ethnic, religious or linguistic minority in a given State party does not depend upon a decision by that State party, but requires establishment by objective criteria (see CCPR/C/21/Rev.1/Add.5, para. 5.2).

96. The Working Group notes that all 14 individuals are Nubians, which in the view of the Committee on the Elimination of Racial Discrimination is one of the minorities living in Egypt (see CERD/C/EGY/CO/17-22, para. 17). All 14 individuals lived in the region of Nubia and took part in a peaceful demonstration that concerned the return of land rights to the Nubian people. The 14 individuals were not the only ones arrested and this was not an isolated incident.

97. Furthermore, the Working Group recalls that the Committee on the Elimination of Racial Discrimination, in its 2016 concluding observations, expressed its concern about the situation of persons belonging to minority groups in the State party, such as the Bedouin/nomads, Nubians and Berbers, and especially the social stigmatization from which they suffered, as well as the regional disparities in Egypt that affected border and coastal areas, particularly the regions of Upper Egypt, Sinai and Nubia (ibid.).

[5] See general comment No. 32 of the Human Rights Committee, para. 19. See also *Oló Bahamonde v. Equatorial Guinea* (CCPR/C/49/D/468/1991), para. 9.4.

[6] See *Bandejesky v. Belarus* (CCPR/C/86/D/1100/2002), para. 10.13.

98. The Working Group thus considers that there has been a pattern of behaviour on behalf of the Egyptian authorities towards Nubian people which is discriminatory on the basis of ethnic and social origin and that the arrests of the 14 individuals follow that pattern. The Working Group therefore concludes that the detention of the 14 individuals is arbitrary and falls under category V.

Disposition

99. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Bakri Mohammed Abdul Latif, Hamdy Awad Mahmoud Abdel Hafez, Abdelkader Harbi Mohieddin Mohamed, Ammar Mohamed Refaat, Magdy Farouk Ahmed Mohamed, Mohsen Rabee Saad El Din, Mohamed Bahloul Mohamed Ghazali, Mohamed Azmy Mohamed Ahmed, Mohammed Yousef Mohamed Hassan, Mostafa Kamel Mohamed Taha, Mounir Bashir Mohammed Bashir, Maysiruh Abd Alaziz Muhammad Ali, Walid Fouad Abdeen Nasser and Yahya Mohammed Abdul Khaliq Sulaiman, being in contravention of articles 2, 7, 9, 10, 19 and 20 of the Universal Declaration of Human Rights and of articles 2, 9, 10, 14, 19, 21, 26 and 27 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories II, III and V.

100. The Working Group requests the Government of Egypt to take the steps necessary to remedy the situation of these 14 individuals without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

101. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release unconditionally the 14 individuals and accord them an enforceable right to compensation and other reparations, in accordance with international law.

102. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of the 14 individuals and to take appropriate measures against those responsible for the violation of their rights.

103. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, and the Special Rapporteur on minority issues.

Follow-up procedure

104. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

(a) Whether Bakri Mohammed Abdul Latif, Hamdy Awad Mahmoud Abdel Hafez, Abdelkader Harbi Mohieddin Mohamed, Ammar Mohamed Refaat, Magdy Farouk Ahmed Mohamed, Mohsen Rabee Saad El Din, Mohamed Bahloul Mohamed Ghazali, Mohamed Azmy Mohamed Ahmed, Mohammed Yousef Mohamed Hassan, Mostafa Kamel Mohamed Taha, Mounir Bashir Mohammed Bashir, Maysiruh Abd Alaziz Muhammad Ali, Walid Fouad Abdeen Nasser and Yahya Mohammed Abdul Khaliq Sulaiman have been released unconditionally and, if so, on what date;

(b) Whether compensation or other reparations have been made to these 14 individuals;

(c) Whether an investigation has been conducted into the violation of these 14 individuals' rights and, if so, the outcome of the investigation;

(d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Egypt with its international obligations in line with the present opinion;

(e) Whether any other action has been taken to implement the present opinion.

105. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example, through a visit by the Working Group.

106. The Working Group requests the source and the Government to provide the above information within six months of the date of the transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

107. The Government should disseminate through all available means the present opinion among all stakeholders.

108. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.[7]

[*Adopted on 24 April 2018*]

[7] See Human Rights Council resolution 33/30, paras. 3 and 7.